IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.18261 of 2024
and W.M.P.Nos.20575 & 20576 of 2024

M/s.Fashion Enterprises,
Represented by its Proprietor
Sudha Brunth Sundar,
S.No.360, Thiruporur Illalur
Nellikuppam Guduvanchery Road,
Nellikuppam Village, Ammapet,
Kancheepuram. ... Petitioner

-vs-

The State Tax Officer (ST),
Thirukazhukundram Assessment Circle,
No.42, Wahab Nagar,
Thirukazhukundram – 603 109. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the Order in Reference No.ZD331123165360X in GSTIN/ID:

33APBS2236L1ZV/2017-18 dated 27-11-2023 passed by the respondent and to quash the same as opposed to principles of natural justice, unsustainable in law & arbitrary.

For Petitioner : Mr.M.A.Mudimannan

For Respondent : Mr.V.Prashanth Kiran, Govt. Adv. (T)

ORDER

An order in original dated 27.11.2023 is challenged in this writ petition on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits. The petitioner asserts that the show cause notice and other communications were merely uploaded on the GST portal and not communicated to the petitioner through any other mode. As a consequence, it is stated that the petitioner was unaware of proceedings and could not participate in the same.

2. Learned counsel for the petitioner submits that the confirmed tax proposal pertains to the mismatch between the petitioner's GSTR 3B and 1

returns. He also submits that the ingredients of Section 74 of applicable GST statutes are not satisfied in the case at hand. On instructions, learned counsel submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He submits that principles of natural justice were complied with by issuing intimation dated 09.05.2023, show cause notice dated 14.06.2023 and by issuing a personal hearing notice dated 20.10.2023. As regards the invocation of Section 74, he submits that the petitioner failed to pay taxes on the taxable supplies reported in GSTR 1 and this constitutes suppression of facts.

4. On examining the impugned order, it is clear that the tax proposal was confirmed because the tax payer neither paid the amounts demanded nor filed any objections. By taking into account the assertion that such non participation was on account of not being aware of proceedings since communications were uploaded on the GST portal, the interest of justice

warrants reconsideration by putting the petitioner on terms.

5. For reasons aforesaid, the impugned order dated 27.11.2023 is set aside on condition that the petitioner remits 10% of the disputed tax demand as agreed to within a period of two weeks from the date of receipt of a copy of this order. The petitioner is permitted to submit a reply to the show cause notice within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of three months from the date of receipt of the petitioner's reply.

6. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

29.07.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

kj

SENTHILKUMAR RAMAMOORTHY,J

kj

To

The State Tax Officer (ST),
Thirukazhukundram Assessment Circle,
No.42, Wahab Nagar,
Thirukazhukundram – 603 109.

W.P.No.18261 of 2024
and W.M.P.Nos.20575 & 20576 of 2024

29.07.2024